

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Saeed Abdulkader,

Civil No. 11-897 (DWF/JJG)

Petitioner,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION
AND MEMORANDUM**

State of Minnesota,

Respondent.

Michael K. Walz, Assistant Hennepin County Attorney, Hennepin County Attorney's Office; and Matthew Frank, Assistant Attorney General, Minnesota Attorney General's Office, counsel for Respondent.

This matter is before the Court upon Petitioner Saeed Abdulkader's ("Petitioner") objections to Magistrate Judge Jeanne J. Graham's April 22, 2011 Report and Recommendation insofar as it recommends that: (1) Petitioner's application for a writ of habeas corpus be denied; (2) Petitioner's application for leave to proceed *in forma pauperis* be denied; (3) this action be dismissed with prejudice; and (4) Petitioner should not be granted a Certificate of Appealability.

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Petitioner's objections.

Based upon the *de novo* review of the record and all of the arguments and submissions of the parties and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Petitioner Saeed Abdulkader's objections (Doc. No. [7]) to Magistrate Judge Jeanne J. Graham's April 22, 2011 Report and Recommendation are **DENIED**.

2. Magistrate Judge Jeanne J. Graham's April 22, 2011 Report and Recommendation (Doc. No. [4]) is **ADOPTED**.

3. Petitioner's application for a writ of habeas corpus (Doc. No. [1]) is **DENIED**.

4. Petitioner's application for leave to proceed *in forma pauperis* (Doc. No. [2]) is **DENIED**;

5. This action is **DISMISSED WITH PREJUDICE**; and

6. Petitioner will **NOT** be granted a Certificate of Appealability.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: July 20, 2011

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge

MEMORANDUM

The Court has denied Petitioner's application for a writ of habeas corpus and dismissed the matter with prejudice. Moreover, the Court concludes, as the Magistrate

Judge did, that a certificate of appealability should not issue in this case.

However, even though the Court has dismissed this matter as time barred, it must observe, based upon its nearly 14 years of experience as a state trial court judge who handled many, many pleas in similar circumstances to that of the Petitioner, that if the Court had reached the merits of the matter, it would have respectfully rejected Petitioner's arguments. Interestingly, the motion to withdraw his guilty plea came not after the sentencing, not after the first violation of probation, but after the second violation of probation when his probation was revoked and he was sent to prison. The state trial court and the Minnesota Court of Appeals reached the same decision, namely, that there was no improper judicial participation in the plea agreements, and that Petitioner's post-conviction motion was untimely in any event.

For the reasons stated, the Court has dismissed the Petitioner's writ of habeas corpus with prejudice and declined to grant a certificate of appealability.

D.W.F.